

# Immigration Violations

## 414.1 PURPOSE AND SCOPE

In accordance with the intent of the March 9, 2017, statement by the Santa Clara County Police Chiefs' Association, it is neither local law enforcement's mission nor role to enforce federal immigration laws. Members of this Department will not detain or arrest any person on the basis of a person's citizenship or status under civil immigration laws.

This Department recognizes that mutual trust and respect is the cornerstone in building a solid foundation for success in protecting and serving the entire community, and in seeking justice for all victims of crime. Members of this Department are expected to treat everyone with dignity, regardless of status.

Law-abiding, undocumented immigrants should not fear arrest or deportation for coming forward to members of the Department to report a crime as a victim or a witness. Without this cooperation, the Department would be less effective in fulfilling its mission. As such, the Department seeks to serve and protect in a way that calms fear and builds trust, and it is incumbent upon all members to this department to make a personal commitment to organizational values, equal enforcement of the law and equal service to the public regardless of immigration status.

## 414.2 POLICY

The responsibility for enforcement of civil immigration laws rests with the U.S. Immigration Customs Enforcement (ICE) Enforcement and Removal Operations (ERO). Any removal decisions or enforcement will not be made by the Department.

The Department will continue to cooperate with ICE involving criminal matters, the protection of public safety, and as required by statute, federal regulation, or court decisions. The Department will not cooperate with the enforcement of immigration violations enumerated in Title 8 USC §1304; 8 USC §1324; 8 USC § 1325 and 8 USC § 1326.

## DEFINITIONS

**Administrative Warrants** - Administrative warrants, also called, hold requests or detainers, are issued by a government agency, typically by Immigration and Custom Enforcement officials' findings that a person is removable from the United States.

**Alien**- An individual who is not a U.S. citizen or U.S. national.

**Illegal Alien** - Also known as an "Undocumented Alien," or "Undocumented Immigrant," is an alien who has entered the United States illegally and is deportable if apprehended, or an alien who entered the United States legally but who has fallen "out of status" and is deportable.

**Immigrant** - An alien who has been granted the right to reside permanently in the United States and to work without restrictions in the United States. Also known as a Lawful Permanent Resident, all immigrants are eventually issued a "green card".

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**Judicial Warrants** - Judicial warrants are criminal warrants issued by a judicial officer, typically a magistrate judge.

**Nonimmigrant** - An alien who has been granted the right to reside temporarily in the United States based on a status that corresponds to the class of visa. Each nonimmigrant status has rules that must be followed in order for the nonimmigrant to remain "in status." A nonimmigrant that violates applicable rules will fall "out of status" and is considered deportable.

**U.S. National** - An individual who owes his/her sole allegiance to the United States, including all U.S. citizens and including some individuals who are not U.S. citizens.

#### **414.3 VICTIMS AND WITNESSES**

To encourage crime reporting and cooperation in the investigation of criminal activity, all individuals, regardless of their immigration status, must feel secure that contacting or being addressed by members of law enforcement will not automatically lead to immigration inquiry and/or deportation. While it may be necessary to determine the identity of a victim or witness, members shall treat all individuals equally and not in any way that would violate the United States or California constitutions.

#### **414.4 IMMIGRATION INQUIRIES PROHIBITED**

Officers shall not inquire into an individual's immigration status for immigration enforcement purposes (Government Code § 7284.6).

##### **414.4.1 CALIFORNIA LAW ENFORCEMENT TELECOMMUNICATIONS SYSTEM (CLETS)**

Members shall not use information transmitted through CLETS for immigration enforcement purposes except for criminal history information and only when consistent with the California Values Act (Government Code § 15160).

Members shall not use the system to investigate immigration violations of 8 USC § 1325 (improper entry) if that violation is the only criminal history in an individual's record (Government Code § 15160).

#### **414.5 DETENTIONS AND ARRESTS**

An officer shall not detain any individual, for any length of time, for a civil violation of federal immigration laws or a related civil warrant (Government Code § 7284.6).

An officer who has a reasonable suspicion that an individual already lawfully contacted or detained has committed a criminal violation of 8 USC § 1326(a) (unlawful reentry) that may be subject to an enhancement due to a previous conviction of an aggravated felony under 8 USC § 1326(b) (2), may detain the person for a reasonable period of time to contact federal immigration officials to verify whether the United States Attorney General has granted the individual permission for reentry and whether the violation is subject to enhancement (Government Code § 7284.6). No

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individual who is otherwise ready to be released should continue to be detained only because questions about the individual's status are unresolved.

If the officer has facts that establish probable cause to believe that a person already lawfully detained has violated 8 USC § 1326(a) and the penalty may be subject to enhancement due to prior conviction for specified aggravated felonies, he/she may arrest the individual for that offense (Government Code § 7284.6).

An officer shall not detain any individual, for any length of time, for any other criminal immigration violation of federal immigration laws (Government Code § 7284.6).

An officer should notify a supervisor as soon as practicable whenever an individual is arrested for violation of 8 USC § 1326(a).

#### **414.6 FEDERAL REQUESTS FOR ASSISTANCE**

The Department does not conduct sweeps or other concentrated efforts to detain suspected undocumented aliens.

If a specific request is made by ICE or any other federal agency, this department may provide available support services, such as traffic control or peacekeeping efforts, during the federal operation with the approval of Division Commander. Members of the department providing such support will wear a department uniform or insignia representing the department during the time of operation.

Members of this department should not participate in such federal operations as part of any detention team unless it is in direct response to a request for assistance on a temporary basis or for officer safety. Any detention by a member of this department should be based upon the reasonable belief that an individual is involved in criminal activity, or where there is a valid judicial warrant.

#### **414.7 NOTIFICATION OF IMMIGRATION AND CUSTOMS ENFORCEMENT**

The United States Department of State Consular Notification policy requires law enforcement to notify certain consular offices when a Foreign National is in custody. (Refer to U.S. Department of State website for completed details. <https://travel.state.gov/content/travel/en/consularnotification.html>). In these instances, the officer shall gather information to determine if consular notification applies. Generally, ICE notification of booked arrestees will be handled according to county jail operations procedures.

#### **414.8 CONSIDERATIONS PRIOR TO REPORTING TO ICE**

All individuals, regardless of their immigration status, must feel secure that contacting law enforcement will not make them vulnerable to deportation. Members of the police department

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should not attempt to determine the immigration status of crime victims and witnesses or take enforcement action against them absent exigent circumstances or reasonable cause to believe that a crime victim or witness is involved in violating criminal laws. In making the determination whether to notify ICE in such circumstances, the officer, in consultation with a supervisor and approval from a command staff member, shall consider the seriousness of the offense and the potential impact to community safety.

Nothing in this policy is intended to restrict officers from exchanging legitimate law enforcement information with any other federal, state or local government entity (8 USC §1373; 8 USC §1644).

#### **414.8.1 POLICE REPORTS**

Upon request, an officer or supervisor should provide a victim or authorized representative with a copy of the report filed by the victim within seven days of the request (Penal Code § 679.10).

#### **414.9 U VISA AND T VISA NONIMMIGRANT STATUS**

Under certain circumstances, federal law allows temporary immigration benefits, known as a U Visa, to victims and witnesses of certain qualifying crimes (8 USC §1101)a)(15)(U)).

Similar immigration protection, known as a T Visa, is available for certain qualifying victims of human trafficking (8 USC §1101 (s)(15)(T)).

Any request for assistance in applying for U Visa or T Visa status should be forwarded in a timely manner to the Investigations Division supervisor assigned to oversee the handling of any related case. The Investigations Division shall:

- (a) Determine the current status of any related case and whether further documentation is warranted.
- (b) If at the time of the U Visa or T Visa request, the related case has been submitted to District Attorney's Office, then it is the District Attorney's Office's exclusive decision on the granting or denying the visa. If the case has been submitted to the District Attorney's Office and it was returned as a rejection for prosecution, then it is the District Attorney's Office's exclusive decision on the granting or denying the visa. The individual or representative requesting the visa will be directed to contact the appropriate person at the District Attorney's Office.
- (c) If the related case will not be sent to the District Attorney's Office for prosecution, (i.e. the statute of limitations has expired, unable to locate the suspect, ect.) then the detective assigned to completing U Visa requests will address the request and complete the certification or declaration, if appropriate, in a timely manner.
  1. The instructions for completing certification and declaration forms can be found on the U.S.Department of Homeland Security (DHS) website.
  2. Form I-918 Supplemental B certification shall be completed if the victim qualifies under Penal Code §679.10 (multiple serious offenses). Form I-914 Supplement

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B certification shall be completed if the victim qualifies under Penal Code §679.11 (human trafficking).

- (d) Ensure that any decision to complete, or not complete, a certification or declaration form is documented in the case file. Include a copy of any completed form in the case file.
- (e) Inform the victim liaison of any requests and their status.

#### 414.9.1 SANTA CLARA COUNTY U VISA CERTIFICATION REQUEST HANDLING

In order to comply with prosecution's discovery obligations, a procedure has been adopted by county protocol to ensure that our department notifies the District Attorney's Office when they received request to certify U Visas. The following is the protocol that is adopted in Santa Clara County:

- (a) If the department receives a request to certify or recertify a U Visa and the department has previously submitted the associated criminal case to the District Attorney's Office, or intends to submit the case to the District Attorney's Office, the department shall forward the U Visa certification request and documents to the designated person at the District Attorney's Office.
- (b) If the department receives a request to certify or recertify a U Visa and the department has closed the case without submitting it to the District Attorney's Office, the department shall make the certification decision. If the case is later submitted to the District Attorney's Office, the completed U Visa will be sent with the complaint.

#### 414.9.2 TIME FRAMES FOR COMPLETION

Officers and their supervisors who are assigned to investigate a case of human trafficking as defined by Penal Code §236.1 shall complete the above process and the documents needed for a T Visa application within 15 business days of the first encounter with the victim, regardless of whether it is requested by the victim (Penal Code §236.5).

Officers and their supervisors shall complete the above process and the documents needed for a U Visa or T Visa application pursuant to Penal Code §679.10 and Penal Code §679.11 within 90 days of a request from the victim or victim's family related to one of their assigned cases. If the victim is in removal proceedings, the certification shall be processed within 14 days of the request.

#### 414.10 REPORTING TO LEGISLATURE

The investigations Division supervisor or the authorized designee should ensure that certification requests are reported to the Legislature in January of each year and include the number of certifications signed and the number denied. The report shall comply with Government Code §9795 (Penal Code §679.10; Penal Code §679.11).